



INTERIOR BOARD OF INDIAN APPEALS

Migisew–Asiniwiin Ojibwa Grand Council of Clans v. Director, Office of
Self-Governance, Bureau of Indian Affairs, et al.

41 IBIA 139 (07/27/2005)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

MIGISEW – ASINIWIIN OJIBWA GRAND	:	Order Docketing and
COUNCIL OF CLANS,	:	Dismissing Appeal
Appellant,	:	
	:	
v.	:	
	:	
DIRECTOR, OFFICE OF SELF-	:	Docket No. IBIA 05-83-A
GOVERNANCE, BUREAU OF INDIAN	:	
AFFAIRS; ROCKY MOUNTAIN	:	
REGIONAL DIRECTOR, BUREAU OF	:	
INDIAN AFFAIRS; and CHIPPEWA-	:	
CREE BUSINESS COMMITTEE,	:	
Appellees.	:	July 27, 2005

On July 22, 2005, the Board received an appeal from the Migisew – Asiniwiin Ojibwa Grand Council of Clans (Appellant), which identifies itself as “formerly the Rocky Boy’s Band of Chippewa Indians.” Appellant seeks Board review of “a pattern of inaction” by the Director, Office of Self-Governance, Bureau of Indian Affairs (Director; BIA) and the Rocky Mountain Regional Director, BIA (Regional Director), in failing to conduct business with Appellant as the legitimate tribal government of the Rocky Boy’s Reservation in Montana. See Complaint ¶ 3. The Board docketed the appeal, but dismisses it for lack of jurisdiction.

Appellant contends that it, and not the Federally-recognized Chippewa-Cree Tribe of the Rocky Boy’s Reservation (Chippewa-Cree Tribe), is the legitimate political successor to the “Rocky Boy’s Band of Chippewa Indians,” referred to in the April 30, 1908, Interior Appropriations Act, 35 Stat. 70, 84. Appellant argues that the sovereign authority of the Rocky Boy’s Band was illegally usurped between 1925 and 1935, culminating in the Secretary of the Interior’s approval of the Constitution and By-Laws under which the Chippewa-Cree Tribe was organized. In effect, Appellant requests that BIA and the Board “de-recognize” the Chippewa-Cree Tribe and in its place recognize Appellant as the successor to the Rocky Boy’s Band and as the tribal government with authority over the Rocky Boy’s Reservation.

Although styled as an appeal brought pursuant to 25 C.F.R. § 2.8 (appeal from inaction of official), Appellant gives no indication that it complied with the specific procedural

requirements of section 2.8 prior to filing this appeal. ^{1/} Under the circumstances, however, an order to show cause, see, e.g., Hawkins v. Rocky Mountain Regional Director, 40 IBIA 56 (2004), or dismissal without prejudice to allow Appellant to comply with section 2.8, would serve no purpose because it appears that none of the substantive relief that Appellant seeks would be within the authority of the Director, the Regional Director, or the Board to grant.

The Board is not a court of general jurisdiction, and only has authority that has been delegated to it by the Secretary of the Interior. Schmitges v. Skull Valley Band of Goshute Indians of Utah, 41 IBIA 138 (2005). That delegation does not include authority to review the Assistant Secretary - Indian Affairs' list of Federally-recognized Indian tribal entities, see 68 Fed. Reg. 68,180 (Dec. 5, 2003), which recognizes the Chippewa-Cree Tribe. See generally Haney v. Acting Assistant Secretary - Indian Affairs, 39 IBIA 25 (2003) (Board may not review a decision by the Assistant Secretary - Indian Affairs unless the specific decision allows such review, or when a regulation grants such a right). Nor does it include authority to review action by the Secretary of the Interior, such as the Secretary's approval in 1935 of the Chippewa-Cree Tribe's Constitution.

The limitations applicable to the Board in this case also apply to the Director and Regional Director. Therefore, no purpose would be served by giving Appellant an opportunity, pursuant to 25 C.F.R. § 2.8, to solicit an action or decision on the merits from the Director or Regional Director. Rather, dismissal for lack of jurisdiction is appropriate.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board docketed this appeal, but dismisses it for lack of jurisdiction.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Anita Vogt
Senior Administrative Judge

^{1/} Section 2.8(a) provides several specific requirements that an individual must follow before the alleged inaction of a BIA official becomes appealable to the next level. For example, the individual must first submit a request in writing to the BIA official from whom action is sought, and request a decision on the merits of the matter to be addressed.